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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-1028

FRED R. FIELD, JR., individually and as President of the New York District Council of the International Longshoremen's Association, Executive Officer of Local 856, and on behalf of all longshoremen, seamen and citizens whose rights are involved and/or have an interest in the establishment of the World Trade Center in the downtown area of the Borough of Manhattan, City and State of New York,

Petitioner,

against

UNITED STATES OF AMERICA, THE CITY OF NEW YORK, and THE PORT OF NEW YORK AUTHORITY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Opinion Below

The District Court for the Southern District of New York dismissed portions of the complaint for failure to state a claim upon which relief can be granted and other portions for lack of Federal Court jurisdiction. Its opinion, written by Judge Arnold Bauman, is reported at 340 F. Supp. 175 and is set forth in the appendix to the petition at pages A-3—A-11. The Court of Appeals for the Second Circuit affirmed the District's Court's decision from the bench, without opinion, on October 30, 1972.

Questions Presented

(1) Is petitioner being denied any Federal right, constitutional, statutory or otherwise (a) by the construction of a landfill project which Congress has expressly authorized; (b) by the construction of the World Trade Center whose authorizing legislation has previously been upheld by this Court; or (c) by the operation of the Port Authority Trans-Hudson Railroad (PATH) whose authorizing legislation has likewise been previously upheld by this Court?

(2) Does Federal Court jurisdiction exist over an action seeking a declaratory judgment concerning the tax status, under Federal law, of the World Trade Center and/or of The Port Authority of New York and New Jersey which constructed and is operating the Center?

(3) Does petitioner's prayer for a judicial declaration concerning the obligations of The Port Authority of New York and New Jersey "to provide adequate financing for the continued operation of the Port Authority Trans-Hudson system" present a case or controversy within the jurisdiction of the Federal Courts?

Statutes Involved

The pertinent statutes, 33 U.S.C. § 403 and 33 U.S.C. § 59e-1, are set forth in the appendix to the Petition at pages A-10—A-11.

Statement of the Case

This purported class action seeking declaratory relief was brought by petitioner, individually and as President of the New York District Council of the International Longshoremen's Association "on behalf of all longshoremen, seamen and citizens whose rights are involved and/or

have an interest in the establishment of a World Trade Center in the downtown area of the Borough of Manhattan." The respondents are the United States of America, the City of New York and the Port Authority of New York and New Jersey (formerly the Port of New York Authority). The last named respondent is an agency of the States of New York and New Jersey created in 1921 by an interstate compact between them to which Congress consented. N.Y. Unconsol. Laws §§ 6401 *et seq.* (McKinney's 1921); N.J.S.A. §§ 32:1-1 *et seq.* (1921); 42 U.S. Stat. 174 (1921).

The action was commenced on May 2, 1967, a few months after the Port Authority was granted a permit by the Corps of Engineers, dated December 21, 1966, to place fill from the excavation at the World Trade Center site in the nearby Hudson River. The Port Authority was directed to construct the World Trade Center by legislation of the two States enacted in 1962. N.Y. Unconsol. Laws §§ 6601 *et seq.* (McKinney's 1962); N.J.S.A. §§ 32:1-35.50 *et seq.* (1962).

The landfill development, which necessitated the elimination of several piers owned by the City, was one of the earliest steps in the effectuation of the City's comprehensive plan to revitalize lower Manhattan. One of the recommendations contained in this comprehensive plan, known as the Lower Manhattan Plan,[1] is the redevelopment of the Hudson River waterfront through the elimination of deteriorating piers and the placing of fill in the river on City-owned underwater property to create additional land for housing, recreational and commercial development.

The availability of fill from the World Trade Center site made it possible for the City to receive over 23 acres of new upland area free of charge and the closeness of this

[1] The Lower Manhattan Plan, New York City Capital Project ES-1 (1966).

area enabled the Port Authority expeditiously to dispose of huge quantities of debris and excavation material.[2] The landfill project was formally approved by the Board of Estimate of the City of New York on June 22, 1967,[3] and the land created by the project has now been leased by the City to the Battery Park City Authority for residential development. This public authority was created by State statute in 1968 for the express purpose of redeveloping the "blighted area" north of Battery Park and on and adjacent to the Hudson River which the Legislature found was no longer "suitable or useful for piers or for facilities appurtenant to the loading and unloading of commercial cargo." N.Y. Pub. Auth. Law §§ 1970-71 (McKinney's 1968).

The same year, Congress acted to facilitate the financing of the Battery Park City project. This was accomplished by legislation declaring certain portions of the Hudson River "non-navigable waters of the United States" when "bulkheaded and filled". 33 U.S.C. § 59c-1.

The area mentioned in the 1968 Congressional statute embraces the whole of the landfill project to which petitioner objects. Indeed, the non-navigable portions of the Hudson River are currently in the process of being expanded. On January 25, 1972, a permit was issued to the Battery Park City Authority pursuant to the above statute for a further landfill development, extending beyond that which is challenged here. The new project will make the now completed landfill project, which is the subject of this action, an inland area.

Petitioner's brief in the Court of Appeals (Plaintiff-Appellant's Brief, p. 3) makes it clear that the primary

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[2] Journal of Proceedings of the Board of Estimate of the City of New York, 1967, Vol. IV, p. 3781 (May 18, 1967).

[3] Journal of Proceedings of the Board of Estimate of the City of New York, 1967, Vol. V, pp. 4368-78.

reason for the institution of this suit was the landfill project and the concommitant destruction of several City piers on which members of petitioner's union allegedly earned their livelihood. The rambling complaint charges, and the petition continues to allege, that the landfill project as well as the elimination of the piers violate petitioner's constitutional rights to the use and benefit of waterfront property and piers and the free use of navigable waters.

The complaint also sets forth objections to the World Trade Center's tax exempt status under both Federal and State law, and questions the Port Authority's financial obligations regarding the Port Authority Trans-Hudson Railroad (PATH). Petitioner's objections to the Trade Center obviously arise from the fact that it was the construction of the Center which made possible the landfill project and his concern with PATH is most likely due to the fact that it was authorized as part of the same legislation that authorized the World Trade Center. N.Y. Unconsol. Laws § 6603 (McKinney's 1962); N.J.S.A. 32:1-35.52 (1962).

Argument

The Port Authority of New York and New Jersey respectfully submits that the petition for certiorari should be denied since it presents no issue which, in any way, warrants consideration by this Court. The petition consists of little more than a series of abstract statements of law with absolutely no attempt being made to show their applicability to the facts or circumstances of this case. In addition, the complaint itself is totally without merit and can, without any exaggeration whatsoever, be described only as frivolous. First, the landfill project, whose legality the complaint challenges, is fully authorized by law. Its construction has been approved not only by the Corps of En-

gineers but, in addition, by Congress. Second, the validity of the World Trade Center, the other public project which the complaint questions, has been upheld in many prior law suits by both Federal and State courts, including, most importantly, by this Court. And finally, in the language of the District Court, petitioner's "request for a declaration concerning the obligations of the Port Authority 'to provide adequate financing for the continued operation of the Port Authority Trans-Hudson system' presents a non-justiciable issue; that is, there is no 'actual controversy' of which the Court might assume jurisdiction." Petition, Appendix A-7.

The District Court rejected as "frivolous" petitioner's claim that all three defendants—the United States, the Port Authority and the City—had violated petitioner's "Constitutional right to the use and benefit of waterfront property and piers and the free use of navigable rivers." Petition, Appendix A-4. It could not have done otherwise since there is no constitutional right to the commerical use of waterfront property or piers.

As to petitioner's claim that the Corps of Engineers had illegally issued a permit for the landfill project, the District Court ruled that the 1968 Congressional legislation, 33 U.S.C. § 59c-1, "had the effect of ratifying the issuance of the permit and eliminating the question of its validity by declaring the filled area to be 'non-navigable waters within the meaning of the laws of the United States' . . ."[4] Petition, Appendix A-7.

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[4] The landfill which is the subject of this action was placed in the Hudson River in accordance with the terms of a permit validly granted by the Corps of Engineers on December 21, 1966, pursuant to § 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403; see, *Wisconsin* v. *Illinois*, 278 U.S. 367, 412-13 (1929); *United States* v. *Republic Steel Corp.*, 362 U.S. 482, 486-87 (1960).

The legislation to which the Court referred was requested by the City and State of New York to facilitate the financing of the Battery Park City development. It was enacted after assurances had been given by the Corps of Engineers that the landfill project would not only have no adverse effect on navigation in New York harbor, but would in fact aid navigation by reducing the amount of floating debris resulting from the rotting and decaying piers along the lower Manhattan waterfront. *Hearings on S. 3710 before Subcommittee on Rivers and Harbors and Subcommittee on Flood Control of the Committee on Public Works, House of Representatives,* 90th Cong. 2d Sess. at 633-41 (1968); see also statement of Congressman Emanuel Celler, *Id.* at 459-60. The full text of the 1968 Act of Congress reads as follows:

> "Those portions of the East and Hudson Rivers in New York County, State of New York, lying shoreward of a line within the United States Pierhead Line as it exists on the date of enactment of this Act [August 13, 1968], and bounded on the north by the north side of Spring Street extended westerly and the south side of Robert F. Wagner, Senior Place extended easterly, are hereby declared to be non-navigable waters of the United States within the meaning of the laws of the United States. This declaration shall apply only to portions of the above-described area which are bulkheaded and filled. Plans for bulkheading and filling shall be approved by the Secretary of the Army, acting through the Chief of Engineers, on the basis of engineering studies to determine the location and structural stability of the bulkheading and filling in order to preserve and maintain the remaining navigable waterway. Local interests shall reimburse the Federal Government for any engineering costs incurred under this section." 33 U.S.C. § 59c-1.

This statute makes it clear beyond doubt that the landfill project has Congressional approval. The Report of the

House Committee on Public Works fortifies this conclusion. It states:

> "The purpose of this Section is to declare certain areas of the East and Hudson Rivers, in New York City, non-navigable, so as to permit the development of a project planned by the State and the City of New York to be built on filled lands." H.R. Rep. No. 1709, 90th Cong., 2d Sess. at 59 (1968).

The report goes on to explain:

> "This declaration of nonnavigability withdraws the Federal Government's right to order the structures removed for purposes of navigation under the commerce clause of the Constitution without compensation. This will remove a cloud on the title, and permit local interests to make financial arrangements for the development of the area for useful purposes other than navigation." *Id.*

Any conceivable question that petitioner could raise with respect to the validity of the original 1966 permit for the landfill project issued by the Corps of Engineers has been put to rest not only by Congressional action expressly approving a landfill development in the Hudson River in the very area in question but also by the subsequent action of the Corps of Engineers in January, 1972, specifically approving a new and much larger landfill project encompassing the entire landfill area which petitioner here questions. The original landfill development was constructed by the Port Authority for the City of New York and has now been incorporated into the new enlarged Battery Park City landfill project presently underway in accordance with the terms of the permit issued by the Corps of Engineers pursuant to the 1968 statute.

Petitioner's only contention as to this specific Congressional consent, which demolishes his claim of illegal fill placement, is that he has been deprived of his constitu-

tional rights by the provisions of retroactive civil legislation. But, as we have seen, petitioner has no vested right that can be impaired by any legislation whether or not retroactive.

Moreover, if petitioner is arguing that Congress has no power to sanction by subsequent act an alleged unlawful structure in the navigable waters of the United States, this argument was rejected over 100 years ago in *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 18 How. 421 (1856). There, this Court upheld the constitutionality of a Federal statute declaring a bridge across the Ohio River at Wheeling to be a lawful structure notwithstanding the fact that four years earlier it had adjudged the very same bridge to be an illegal obstruction to navigation in *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 13 How. 518 (1852).

We respectfully submit therefore that petitioner's allegations with respect to the legality of the landfill project and the removal of the piers fail to state a claim upon which relief can be granted, and therefore does not warrant consideration by this Court.

Petitioner also places in issue the validity of the tax-exempt status of both the World Trade Center and the Port Authority under Federal tax law. It is clear that jurisdiction over these allegations is lacking. The Federal Declaratory Judgment Act, 28 U.S.C. § 2201, under which petitioner claimed to be suing, expressly provides that a declaratory judgment may not be made "with respect to Federal taxes." It is plain that "In this field the courts have no jurisdiction to enter declaratory judgments." *Jolles Foundation, Inc.* v. *Moysey*, 250 F.2d 166, 169 (2d Cir. 1957).

The petition and complaint also raise the question of the exemption of the World Trade Center from State taxation. While Judge Bauman stated that "I choose to decline to entertain that claim," we respectfully point out that these allegations also fail to state a claim upon which relief can

be granted. As the District Court's opinion recognizes, a number of suits attacking the World Trade Center had previously been brought and had uniformly been resolved in favor of that project's validity.[5]

Courtesy Sandwich Shop, Inc. v. *Port of New York Authority*, 12 N.Y.2d 379, 190 N.E.2d 402, 240 N.Y.S.2d 1 (1963), *appeal dismissed for want of a substantial Federal question*, 375 U.S. 78 (1963),[6] *rehearing denied*, 375 U.S. 960 (1963), is a clear holding for the proposition that the Trade Center constitutes a public use. There is certainly nothing invalid about exempting from taxation publicly-owned property devoted to a public use. An identical contention was determined to be without merit in *Bush Terminal Co.* v. *City of New York*, 282 N.Y. 306, 26 N.E.2d 269 (1940), a case involving the Port Authority's first

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[5] In five previous law suits every objection to the Trade Center's validity has been found to be without merit.

1. *Courtesy Sandwich Shop, Inc.* v. *Port of New York Authority*, 12 N.Y.2d 379, 190 N.E.2d 402, 240 N.Y.S.2d 1 (1963), *appeal dismissed for want of a substantial Federal question*, 375 U.S. 78 (1963), *rehearing denied*, 375 U.S. 960 (1963);
2. *Matter of Port of New York Authority (World Trade Center)*, 18 N.Y.2d 250, 219 N.E.2d 797, 273 N.Y.S.2d 337 (1966), *certiorari denied sub nom. McInnes* v. *Port of New York Authority*, 385 U.S. 1006 (1967);
3. *Port Authority Bondholders Protective Committee* v. *Port of New York Authority*, 387 F.2d 259 (2d Cir. 1967), *aff'g* 270 F. Supp. 947 (S.D.N.Y. 1967);
4. *Merns, Inc.* v. *Department of Highways of City of New York*, N.Y.L.J. June 26, 1967, p. 15, cols. 7-8 (Sup. Ct., N.Y. Co.);
5. *Wien* v. *Port of New York Authority*, 23 N.Y.2d 668, 242 N.E.2d 746, 295 N.Y.S.2d 491 (1968), *aff'g* 29 A.D.2d 847, 288 N.Y.S.2d 592 (1st Dept. 1968), *aff'g* N.Y.L.J. August 4, 1967, p. 8, cols. 2-6 (Sup. Ct., N.Y. Co.).

[6] This Court's action in dismissing an appeal for want of a substantial Federal question constitutes, of course, a decision on the merits. See, *Ohio ex rel. Eaton* v. *Price*, 360 U.S. 246, 247 (1959).

inland freight terminal. There, Chief Judge Lehman, relying upon a decision by this Court, stated:

> "A municipality or agency of the State carrying out a public purpose may at times compete with private business. Those owning the private business are not deprived of their right to the equal protection of the law, guaranteed by the Constitution of the United States, because the private business is subjected to a tax from which the State agency is immune. (*Puget Sound Power & Light Co.* v. *County of King,* 264 U.S. 22.)" 282 N.Y. at 322.

We emphasize, however, that while the Trade Center is exempt from taxation, its authorizing legislation makes express provision for substantial in lieu-of-tax payments by the Port Authority to the City of New York, N.Y. Unconsol. Laws § 6611 (McKinney's 1962); N.J.S.A. 31:1-35.60 (1962), and the Authority has, in fact, entered into an in-lieu-of-tax agreement obligating it to make such payments.

Moreover, petitioner's characterization of the Trade Center as "a real estate business" adds nothing to the argument. Similar unfounded characterizations were set forth, without success, in the prior cases listed in footnote 5, *supra.*

Finally, petitioner makes two references in his complaint to PATH. He correctly states that statutory authorization for the Port Authority's operation of the railroad is contained in the same legislation which directs it to construct the World Trade Center. Also, he asks the court to declare "the obligations of the defendant, THE PORT OF NEW YORK AUTHORITY, to provide adequate financing for the continued operation of the Port Authority Trans-Hudson system." Not only do these allegations fail to raise a Federal question but, as recognized by the District Court, they fail to present an "actual controversy," the absolute prerequisite for Federal Court jurisdiction under Article III of the Constitution.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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February 23, 1973

Proof of Service

I, PATRICK J. FALVEY, a member of the Bar of the Supreme Court of the United States, and General Counsel of, and attorney for, Respondent The Port Authority of New York and New Jersey, hereby certify that on the 23rd day of February, 1973, I served copies of the foregoing brief on counsel for Petitioner and Counsel for the other Respondents, by mailing three copies thereof in a duly addressed envelope, with air mail postage prepaid, to each of the following in this cause:

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